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In the
Supreme Court of the United States

DANIEL GUGGENHEIM, SUSAN GUGGENHEIM AND MAUREEN H. PIERCE,

Petitioners,

v.

CITY OF GOLETA, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICI CURIAE* NATIONAL APARTMENT ASSOCIATION, NATIONAL MULTI HOUSING COUNCIL, SAN DIEGO COUNTY APARTMENT ASSOCIATION, APARTMENT ASSOCIATION, CALIFORNIA SOUTHERN CITIES, APARTMENT ASSOCIATION OF ORANGE COUNTY, APARTMENT AND OFFICE BUILDING ASSOCIATION OF METROPOLITAN WASHINGTON IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI*[1]

The National Apartment Association ("NAA") is the leading national advocate for quality rental housing. NAA is a federation of 170 state and local affiliated associations, representing more than 50,000 members responsible for more than 6 million apartment units nationwide. NAA is the largest broad-based organization dedicated solely to rental housing.

The National Multi Housing Council ("NMHC") is a national association representing the interests of the larger and most prominent apartment firms in the United States. NMHC's members are the principal officers of firms engaged in all aspects of the apartment industry, including ownership, development, management, and financing. NMHC advocates on behalf of rental housing, conducts apartment-related research, and promotes the desirability of apartment living.

The San Diego County Apartment Association ("SDCAA") is a trade association serving the needs of individuals and companies who own, manage, or provide services and products to more than 150,000 rental housing units in San Diego County, California. The association's mission is to protect and preserve the economic vitality of the rental housing industry in San Diego County. SDCAA is

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[1] The parties' counsels of record have received timely notice of the intent to file this brief. The parties have consented to the filing of amicus briefs in this case and filed consent letters with the clerk. This brief was not authored in whole or part by counsel for a party, and no person or entity, other than *amici* and their counsel, has made a monetary contribution to the preparation or submission of this brief.

an affiliated association of the National Apartment Association.

The Apartment Association, California Southern Cities ("Southern Cities") began eight decades ago in Long Beach, California as a group of apartment owners united to improve the rental housing market. More than 69,000 apartment and rental property owners do business in the 54 cities of Southern Los Angeles County, which is the area represented by Southern Cities. The association supports the private property rights of its members and advocates for fair governmental treatment for multi-family residential businesses with respect to taxation, fees, land use, zoning, and other issues affecting the real estate industry. Southern Cities is an affiliated association of the National Apartment Association.

The Apartment Association of Orange County ("AAOC") is a nonprofit California corporation. The Association has approximately 3,000 members, consisting primarily of private individuals who own residential rental property. AAOC advances the economic, social, and educational interests of its members. AAOC has a strong interest in protecting the constitutional rights of its members, and in seeking to avoid dilution of those constitutional rights. AAOC is an affiliated association of the National Apartment Association.

The Apartment and Office Building Association of Metropolitan Washington (AOBA) is the leading membership organization representing commercial and multi-family residential real estate in the Washington, DC area. AOBA's mission is to protect and enhance the value of its members'

investments through effective leadership and advocacy, information exchange, and professional development. Currently, the combined portfolio of AOBA's membership is more 208,719 residential rental units in the District of Columbia, Maryland, and Virginia. AOBA is an affiliated association of the National Apartment Association.

One-third of American households rent their homes. As providers of rental housing, *amici* members face rent control regulations that substantially affect their ability to deliver affordable housing for residents while generating return for their investors. Rent control reduces the revenue apartment owners and managers need to maintain their existing assets while also reducing access to the capital needed in order to provide construction of new apartment homes and rental units.

SUMMARY OF ARGUMENT

The proclivity of governments' habitual acquisition of private property without compensation posed a sufficient concern to the Founders to cause them to include a prohibition of that practice in the Bill of Rights. Notwithstanding that prohibition, under the Takings Clause of the Fifth Amendment, government entities have continued to acquire and regulate private property often triggering disputes about the need for compensation. These disputes have resulted in an expanding body of judicial decisions on the application of the Takings Clause.

The Guggenheim's petition represents an opportunity for the Court to bring the Ninth Circuit's decision into conformance with other federal courts and the prior decisions of this Court, particularly *Palazzolo v. Rhode Island*, 533 U.S. 606

(2001). That decision contained six concurring and dissenting opinions, chiefly revolving around the ripeness of Mr. Palazzolo's claim. By contrast, in *Guggenheim v. City of Goleta*, 582 F.3d 996 (9th Cir. 2009) *rev'd en banc*, 2010 WL 5174984 (9th Cir. Dec. 22, 2010), the original panel decision raised and decided the ripeness issue *sua sponte*. The subsequent *en banc* decision, while reversing the panel, did not disturb the conclusion that the claim was ripe ("... we assume without deciding that the claim was ripe ..." Pet. App. 13a). The Guggenheim petition, therefore, presents the Court with an opportunity to clarify the application of the three factors identified in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1977) without the dilution or distraction of collateral issues.

The Ninth Circuit erroneously held that the owner of a property acquired after the enactment of rent controls cannot maintain a takings claim. That decision has enormous implications for investment expectations in the real estate sector and merits the Court's attention.

ARGUMENT

I. THE NINTH CIRCUIT'S HOLDING CONFLICTS WITH THE COURT'S DECISION IN *PALAZZOLO*, WHICH EXPRESSLY FOUND THAT PARTIES WHO PURCHASE PROPERTY AFTER THE ENACTMENT OF RESTRICTIVE REGULATIONS ARE NOT BARRED FROM ASSERTING A TAKINGS CLAIM BASED ON THOSE REGULATIONS.

A state's regulatory action results in a *per se* taking when: 1) it requires an owner to suffer a

permanent physical invasion of his property, *see Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 438 (1982); or 2) it deprives an owner of "*all* economically beneficially us[e]" of his property. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992) (emphasis in original). In addition, under *Penn Central Transportation Co. v. New York City*, a regulation that limits an owner's use of land without eliminating "all economically beneficial" use of that land will result in a taking if "justice and fairness" require that the property owner be compensated for his loss. *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978). To determine whether justice so requires, a court should examine several factors, including "[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations" and "the character of the governmental action" which effects the interference. *Id.*

In this case, the Ninth Circuit declined to engage in a complete *Penn Central* analysis of the Guggenheim's claims because the Guggenheims purchased the property in question after the rent control regulation was promulgated. Pet. App. 14a-24a. Accordingly, the Ninth Circuit reasoned, the price that the Guggenheims paid for the property must have "reflected the burden of rent control," and thus the Guggenheims could not have had "distinct investment-backed expectations" with which the rent control provision could have interfered. *Id.* at 18a-19a. This finding, which conflicts with this Court's holding in *Palazzolo v. Rhode Island*, enabled the Ninth Circuit to avoid the question of whether

the transfer of wealth caused by rent control results in a regulatory taking. This Court has raised this question before, *see Yee v. City of Escondido*, 503 U.S. 519, 530 (1992), but has never resolved it. Granting certiorari will thus provide the Court with the opportunity to reinforce its *Palazzolo* holding and to remedy the unfair wealth transfer effected by rent control ordinances such as the one at issue in Goleta.

The Ninth Circuit's reasoning in *Guggenheim* ignores this Court's holding in *Palazzolo v. Rhode Island*, which determined that even a party who acquires property after a regulation is promulgated can assert a takings claim if the regulation has a sufficiently severe impact on that party's economic expectations. *Palazzolo v. Rhode Island*, 533 U.S. 606, 613-14 (2001). In *Palazzolo*, the state of Rhode Island repeatedly denied a corporation the right to develop several parcels of waterfront land. *Id.* at 613-14. Following the dissolution of the corporation, the property passed to the corporation's sole shareholder by operation of law. *Id.* at 614. When the state denied the shareholder the right to develop the property, he filed suit in state court, alleging that the State's wetland regulations, as applied to his property, had deprived him of "economically, beneficial use of his property, resulting in a total taking." *Id.* at 615-16. The Rhode Island Supreme Court disagreed, finding in part that "petitioner had no right to challenge regulations predating ... [his] legal ownership of the property." *Id.* at 616. Rejecting this reasoning, the Supreme Court found that the date the shareholder acquired the property was irrelevant.

> Just as a prospective enactment, such as a new zoning ordinance, can limit the value of land without effecting a taki ıg because it can be understood as reasonable by all concerned, other enactments are unreasonable and do not become less so through passage of time or title. Were we to accept the State's rule, the post enactment transfer of title would absolve the State of its obligation to defend any action restricting land use, no matter how extreme or unreasonable. A State would be allowed, in effect, to put an expiration date on the Takings Clause. This ought not to be the rule. Future generations, too, have a right to challenge unreasonable limitations on the use of land. ... A blanket rule that purchasers with notice have no compensation right when a claim becomes ripe is too blunt an instrument to accord with the duty to compensate for what is taken.

Id. at 627-28.

According to this Court's formulation, then, the mere fact that a party obtained his property following the enactment of a regulation does not justify a state's use of such a regulation to deprive the party of the reasonable use of his land.[2] *Id.*

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[2] *Palazzolo* ultimately upheld the Rhode Island regulations based on an analysis of other *Penn Central* factors. *Palazzolo v. Rhode Island*, 533 U.S. at 631.

The Ninth Circuit differentiated this case from *Palazzolo* for two reasons. *See* Pet. App. 14a-21a. First, the court noted that where *Palazzolo* addressed an as-applied challenge to an alleged taking, the Guggenheims asserted only a facial challenge to the City of Goleta rent control provision. *Id.* at 15a. Second, while the transfer of property in *Palazzolo* occurred by operation of law, the Guggenheims purchased their property on the open market. *Id.* The Ninth Circuit reasoned that these variances were relevant because

> [a]n as applied challenge necessarily addresses the period during which the administrative or judicial proceedings for relief occur, so justice may require that title transfers during the ripening period not bar the action. By contrast, there is no such extended period applicable to a facial challenge, because the only time that matters is the time the ordinance was adopted,...

and because in this case, the Guggenheims purchased the property after the County of Santa Barbara enacted the ordinance in question, which the city of Goleta later adopted. *Id.* at 15a-16a. Relying on these supposed distinctions, the majority refused to apply *Palazzolo* to the Guggenheim's situation. Instead, it found that because the Guggenheims had notice of the rent control provision when they purchased their property, they could not have reasonably anticipated an increased stream of income from the property. *Id.* at 18a-19a. Accordingly, the court reasoned, the Guggenheims failed to satisfy the portion of the *Penn Central* test

which requires courts to consider the economic impact of a regulation on a claimant's "distinct investment-backed expectations." *Id.* at 19a.

As Judge Bea's dissent observes, however, the majority improperly distinguished *Palazzolo* based on supposed differences that are in fact irrelevant. Regarding the question of whether courts can apply *Palazzolo* to a case which asserts only a facial challenge, Judge Bea notes, "If the *expectations* are valid and are expropriated, what does it matter as to their existence that they will be injured in all cases (facial challenge) or just in some (as-applied challenge)? Either they are valid expectations, or they aren't." *Id.* at 37a. Addressing the question of how the claimants obtained their property, Judge Bea observed,

> The plaintiff in *Palazzolo* acquired title after the challenged land-use restriction was enacted and nonetheless prevailed without claiming that he should be considered to have become the owner when his corporation bought the land before the restriction's enactment on some theory of advantageous piercing of the corporate veil *cum* relation back.

Id. at 36a.

In fact, the situation faced by the Guggenheims is substantially similar to that addressed in *Palazzolo*. In both cases, the state relied on a regulation in effect at the time a property holder purchased his land in order to limit the income the property owner could derive from that land. However, in both cases, when the new owners obtained title to the land in question, they received

the full property rights associated with that land, including the right to protest the state's interference with their investment-backed expectations. As the Court noted in *Nollan v. California Coastal Comm'n*, "So long as the Commission could not have deprived the prior owners of the easement without compensating them, the prior owners must be understood to have transferred their full property rights in conveying the lot." *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 834, n. 2 (1987). Based on this precedent, *Palazzolo* found that the mere fact that the shareholder obtained title to his property after the regulations were promulgated did not foreclose his ability to allege a takings violation based on those regulations because when he received title to the waterfront property, he also obtained the right to earn income from that property and to pursue a takings claim if the state unjustly prevented him from so using the property. *Palazzolo v. Rhode Island*, 533 U.S. at 629. Similarly, when the Guggenheims purchased the land on which their mobile-home park sits, all associated property rights, including the right to challenge the state's regulation, transferred to them. The fact that the regulation predated their ownership of the land is thus irrelevant: if the prior owners could have asserted a takings claim based on the regulations, so too can the Guggenheims.[3]

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[3] As Justice Scalia noted in his concurrence to *Palazzolo*,

> the fact that a restriction existed at the time the purchase took title ... should have no bearing upon the determination of whether the restriction is so substantial as to constitute a taking. The 'investment-backed expectations' that the law will take into account do not

Palazzolo does not suggest any reason that this holding should be limited to an as-applied challenge to a regulation. Rather, the Court in *Palazzolo* repeatedly rejects the "single, sweeping, rule" that "[a] purchaser or a successive title holder like petitioner is deemed to have notice of an earlier-enacted restriction and is barred from claiming that it effects a taking" because such a rule would effectively "put an expiration date on the Takings clause." *Palazzolo v. Rhode Island*, 533 U.S. at 626. This is true for both a facial and an as-applied challenge: a blanket rule preventing a claimant from asserting a takings violation based solely on the date he acquired the property in relation to the date the regulation was promulgated would deny that petitioner his constitutional right to prevent the unjust taking of his property without compensation, regardless of whether the petitioner asserted an as-applied or facial challenge.

By misapplying *Palazzolo* and failing to engage in a complete *Penn Central* analysis, the Ninth Circuit failed to address the crucial issue in this case: whether the transfer of wealth caused by Goleta's rent control ordinance effects a regulatory taking. As the district court found, the ordinance artificially inflates the value of mobile homes by limiting the rental fees that mobile home park

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> include the assumed validity of a restriction that in fact deprives property of so much of its value as to be unconstitutional. Which is to say that a *Penn Central* taking ... no less than a total taking, is not absolved by the transfer of title.

Palazzolo v. Rhode Island, 533 U.S. at 637 (Scalia, J., concurring).

owners can charge for the use of mobile home "pad" spaces. Pet. App. 98a-99a. As a result, existing mobile home owners are able to sell their homes at a premium – on average, at around $100,000 for a mobile home with an actual value of $12,000.. *Id.* at 101a. By contrast, mobile home park owners only earn about 20% of the rental income they would earn if no rent control statute were in effect. *Id.* at 100a. In essence, then, the rent control ordinance "transfers wealth only to the incumbent mobile home owner," *Yee v. City of Escondido*, 503 U.S. 519, 530 (1992), and deprives mobile home park owners of income to which they would otherwise be entitled.[4]

In *Yee*, this Court suggested that such a wealth transfer might result in a regulatory taking, but did not resolve this question because *Yee* only alleged a *per se* physical invasion. *Yee v. City of Escondido*, 503 U.S. at 530. By contrast, this case specifically alleges that rent control effects a regulatory taking. It thus gives the Court an

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[4] Rent control also negatively impacts the greater local economy. The Guggenheim's expert witness, Dr. Quigley, described the widespread effect of rent control as follows:

> For every dollar by which housing costs are reduced through lower mobile home rents, consumers are forced to pay higher purchase prices for these mobile homes. These two effects roughly cancel. Thus, the principal effect of the rent control regulation is to inhibit increases in the supply of affordable housing in the market and consequently to increase rents in the local economy. The principal costs are borne by those consumers who otherwise would have been able to reside in lower cost housing in the region.

Pet. App. 100a.

opportunity to rectify the fact that the transfer of resulting from rent control forces mobile home park owners to "bear public burdens which, in all fairness and justice, should be borne by the public as a whole," *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)), by severely interfering with their direct investment-backed expectations and depriving them of 80% of the value of rental income which they would otherwise earn, based on an ineffective government purpose.

By inaccurately interpreting *Palazzolo* and *Penn Central*, the Ninth Circuit declined to even consider that the type of wealth transfer caused by rent control measures might result in a regulatory taking, even though *Yee* suggests that this might well be the case. This Court should thus grant certiorari in order to determine whether the type of wealth transfer effected by rent control qualifies as a regulatory taking, and if so, to justly compensate the mobile park home owners affected by this taking.

II. RENT CONTROLS HAVE HISTORICALLY BEEN VIEWED AS TEMPORARY MEASURES ENACTED AND REVISED IN RESPONSE TO EXTRAORDINARY HOUSING MARKET CONDITIONS.

Historically, rent controls were enacted as temporary measures aimed at addressing unique economic conditions. The usual economic conditions that give rise to enacting rent controls are periods of major war and peace time periods of rapid general inflation.[5] Rent control proponents claim that

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[5] Downs, *A Reevaluation of Residential Rent Controls*, 1996, at p. 9.

temporary controls are justified during such periods as without the controls the unique combination of economic factors would allow property owners to raise rents to unfairly high levels.

Rent controls first appeared in the United States during World War I. These controls were limited to a small number of communities that had experienced severe housing shortages. These controls were phased out soon after the war ended. During World War II, demand for housing in metropolitan areas soared as thousands of new workers moved to cities. To house these new workers, additional rental units were needed. However, in order to conserve materials for war production, the building of new rental units was prohibited in most areas. This combination of high demand and restricted supply had the potential to push rent prices to higher levels than had previously prevailed. In 1942, the federal government enacted the Emergency Price Control Act, 56 Stat. 23, 50 U.S.C. Appx. §§ 901 *et seq.* Under this statute, nationwide rent controls were put into effect as part of a general price control program. When the Emergency Price Control Act expired in 1947, Congress passed the Federal Housing and Rent Act of 1947. Under the 1947 Act, all communities in the United States remained under rent controls until 1949. However, these controls were once again dismantled as the economic conditions that gave rise to them concluded.

Periods of rapid general inflation have also spurred the adoption of rent control measures. In fact, most rent control laws still in effect today have their origins in the period of hyperinflation which

took place during the 1970s. The first of these regulations was enacted in 1971 when the federal government imposed a 90 day price, wage, and rent freeze for the entire country. This regulation was followed by a period of flexible price stabilization[6] that lasted until January 1973 when more normal economic conditions returned.[7]

In the later 1970s, several U.S. cities adopted rent controls in response to rapid inflation mainly caused by increases in world petroleum prices. Changing economic conditions coupled with a recognition of the consensus among economic scholars that rent control policies discourage investment in new and existing rental housing, some cities have began the process of ending rent control regulations. Boston, Massachusetts began this trend by eliminating rent control in 1994. A prominent example is found in New York, with the passage of the Rent Regulation Reform Act of 1997 the state established its newest major rent control system.[8] The act continued a decades long trend of moving

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[6] Traditional rent control statutes set a maximum ceiling on the amount of rent a property owner may charge a resident for a particular type of rental unit. On the other hand, rent stabilization sets maximum rates for annual rent increases without setting a maximum rent ceiling.

[7] Downs, *A Reevaluation of Residential Rent Controls*, 1996, at p. 30-32.

[8] Since the inception a rent control system in New York State, which primarily but not exclusively focuses on New York City, at least seven major overhauls to the system have been enacted. Of additional note, during 2010-2011 alone the state legislature has considered over one hundred bills which make smaller adjustments to the rent control system.

New York from a strict rent control regime to rent stabilization and vacancy decontrol.[9]

Even today many of the rent regulations that remain in effect are "temporary" in recognition that economic conditions change and thus the purported utility of such measures will end. For example, major pieces of New York State's rent control statutes are set to fully expire in June of this year unless renewed by the state legislature.[10] A further example may be found in the District of Columbia, where until 2010, the city's rent control ordinance expired every five years. Under the 2010 amendment the ordinance will sunset in 10 years.[11]

Statutes and ordinances in the United States have ranged from temporary traditional rigid rent controls that often hold rents far below real market levels to contemporary laws that slow rent increases. Like the rental markets they regulate, rent control regimes change over time. For this reason, assumptions regarding, the existence or changes to rent control conditions from one form of regulation to another will impact a property investor's investment backed expectations. As periodic government intervention in housing markets is often followed by withdrawal from those markets sophisticated investment expectations should reflect that fact.

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[9] Under vacancy decontrol once an established resident vacates a unit that unit is removed from the rent control system thereby allowing the property owner to rent the unit at market rate.

[10] The Emergency Tenant Protection Act of 1974 and the Emergency Housing Rent Control Law of 1946.

[11] *See* D.C. Law 6-10 and D.C. Official Code § 42-3509.07.

III. THE NINTH CIRCUIT'S STATIC ANALYSIS OF A FLUID REAL ESTATE MARKET RESULTS IN A LEGAL FICTION

The Ninth Circuit held that Petitioners suffered no loss of investment backed expectations because the rent control ordinance was enacted before the land was purchased. Pet. App. 17a-19a. The Court reasoned that the petitioners bought the property at a reduced price that reflected the mandated eighty percent discount on rental income and therefore were precluded from recovery. *Id.* However, the Ninth Circuit's ruling is premised on a foundation of legal fiction that the real estate market is static and investment expectations are set forever at the time of rent control enactment or property purchase. Essentially, the court held that if an investor buys under the conditions of a rent control statute, they are precluded from future relief simply because the expectation of such relief from the ordinance would be "speculative." *Id.* In reality, the real estate market is fluid, and fluctuations in economic conditions can render previously benign regulations into compensable takings.

A myriad of variable economic factors affect rental property investments including rents, interest rates, the availability of credit, employment and job growth, personal income, population, construction and maintenance costs, commodity and energy prices, vacancy rates, housing supply, property taxes, and insurance costs. Many of these factors continue to change on a quarterly, if not daily basis. In fact, an analysis of the Santa Barbara County[12] apartment market for the years 2005-2010 done by

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[12] The City of Goleta is located in Santa Barbara County.

REIS, Inc. illustrates that rents, vacancy rates, employment, and population are anything but static. See: REIS, Inc. Santa Barbara Apartment 4th Quarter 2010 Performance Monitor. From 2005-2010 vacancy rates ranged from a low of 3.3 to a high of 6.7 percent. *Id.* The population grew from 399,000 to 414,550 and average household income rose from $126,000 in 2005 to $140,276 in 2010. *Id.* The county suffered negative employment growth in 14 quarters from 2005 to 2010. *Id.* Predictably rents followed the fundamental trends – rents grew when occupancy rates and household income were high, but dipped as employment and income fell. *Id.*

Because rental housing fundamentals are not static, it is superficial to reason that the economic impact of rent control can be determined only at the time of enactment. As noted above, subsequent statutory modifications or extensions will occur at times of radically different economic conditions. In denying petitioners' claim, the Ninth Circuit fixates on the premise that since the Guggenheims' purchase of the property was post enactment, any thought of a statutory adjustment amounted to "speculation" and not a reasonable investment backed expectation. Pet. App. 17a-19a. The price paid, the court reasoned, was discounted as a result of the rent control statute that was then in existence, and constitutional protections do not apply to speculative investment dreams of a "windfall" of higher rents due to the removal of the rent control statute. *Id.* However, this logic ignores the reality that a relatively benign rent control statute could become very onerous if, for example, rents cannot be adjusted to accommodate higher property taxes, labor or energy costs. Under the Ninth Circuit's

view, current rents and resale value under the rent control regime are the purchaser's only true investment backed expectation, not the ability to maintain buildings, pay higher taxes, or generate the positive cash-flow necessary for the properties to stay in business.

In recent years, the United States has experienced an overabundance of easily financed housing stock where it was actually easier for persons to buy homes rather than rent. The wave of foreclosures that followed disrupted both the owner occupied and rental housing markets. The loss of jobs and subsequent high unemployment rates predictably resulted in rental vacancies where unemployed persons move back to live with their families. This was illustrated by the recently released Southern California Multifamily 2010 Report.[13] A portion of the report chronicled the impact of the loss of 222,000 jobs in the Los Angeles market where certain jurisdictions have adopted rent control and the subsequent 12.6% unemployment rate. As a consequence, rents declined 12.9% in 2009. *Id.* at 15-16.

The impact of a rent control ordinance in a housing market with strong demand and high occupancy levels presents challenges to owners and operators of rental housing. When rent control exists in a market with falling rent prices and occupancy levels, the costs associated with rent control are magnified. Similarly, current difficulties in obtaining financing have caused many owners to

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[13] Southern California Multifamily 2010 Report published by the University of Southern California Lusk Center, Casden Real Estate Economics Forecast.

default on mortgage obligations resulting in an unprecedented number of receiverships. Since one of the *Penn Central's* three areas of analysis is the interference with investment-backed expectations, it makes perfect sense to allow post-enactment purchasers the right to challenge statutes that newly infringe upon this important property right. The City of Goleta "failed" to review the County Code or make any findings on whether there was a purpose or need for the rent control ordinance as it related to the current real estate market. *Guggenheim v. City of Goleta*, at 1002. In essence, The City of Goleta and later the Ninth Circuit ignored the fact that reasonable investments backed expectations will vary tremendously in response to market movement.

The market turmoil described above, will necessarily influence changes in ownership in addition to the everyday business reorganizations and passages of title through inheritance. The Ninth Circuit has held that subsequent post enactment owners cannot have standing to challenge statutes that they claim constitute takings so that the injury may only be asserted by the original owner at the time of enactment. Yet this view was explicitly rejected in *Palazzolo v. Rhode Island*, 533 U.S. at 630. The view that a subsequent owner could bring a challenge was noted by a number of the justices despite their disagreements on many other aspects of the case.

CONCLUSION

Amici certainly agree with petitioners' legal analysis and the importance of resolving a split of ruling among the federal circuits.

We respectfully urge the Court to grant the petition for certiorari because rent control impacts significant portions of the national real estate markets. If a property owner brings a takings challenge in response to the imposition of a rent control statute, that owner should be entitled to an adjudication under the Penn Central factors, rather than be denied that opportunity depending upon when the property was purchased.

Dated: April 13, 2011

Respectfully submitted,

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